EXHIBIT K

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA

JOHN CECIL, on behalf of himself and all others similarly situated, Plaintiff, vs. BP AMERICA PRODUCTION COMPANY (f/k/a Amoco Production Company) (including BP Amoco Corporation, ARCO, BP Exploration, Inc., BP Corporation North America, Inc., and BP Energy Company), Defendant.	Civil Action No. 16-CV-00410-KEW

DECLARATION OF BRIAN T. FITZPATRICK

I. Background and qualifications

1. My name is Brian Fitzpatrick and I am a Visiting Professor at Harvard Law School. I am also a Professor of Law at Vanderbilt University in Nashville, Tennessee. I joined the Vanderbilt law faculty in 2007, after serving as the John M. Olin Fellow at New York University School of Law in 2005 and 2006. I graduated from Harvard Law School in 2000. After law school, I served as a law clerk to The Honorable Diarmuid O'Scannlain on the United States Court of Appeals for the Ninth Circuit and to The Honorable Antonin Scalia on the Supreme Court of the United States. I also practiced law for several years in Washington, D.C., at Sidley Austin LLP. My C.V. is attached as Exhibit 1.

2. My teaching and research have focused on class action litigation. I teach the Civil Procedure course at Harvard and the Civil Procedure, Federal Courts, and Complex Litigation courses at Vanderbilt. In addition, I have published a number of articles on class action litigation

in such journals as the University of Pennsylvania Law Review, the Journal of Empirical Legal Studies, the Vanderbilt Law Review, the NYU Journal of Law & Business, and the University of Arizona Law Review. My work has been cited by numerous courts, scholars, and media outlets such as the New York Times, USA Today, and Wall Street Journal. I have also been invited to speak at symposia and other events about class action litigation, such as the ABA National Institute on Class Actions in 2011, 2015, 2016, and 2017, and the ABA Annual Meeting in 2012. Since 2010, I have also served on the Executive Committee of the Litigation Practice Group of the Federalist Society for Law & Public Policy Studies. I was elected to the membership of the American Law Institute in 2015.

3. In December 2010, I published an article in the Journal of Empirical Legal Studies entitled *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical L. Stud. 811 (2010) (hereinafter "Empirical Study"). This article is what I believe to be the most comprehensive examination of federal class action settlements and attorneys' fees that has ever been published. Unlike other studies of class actions, which have been confined to securities cases or have been based on samples of cases that were not intended to be representative of the whole (such as settlements approved in published opinions), my study attempted to examine *every* class action settlement approved by a federal court over a two-year period, 2006-2007. *See id*. at 812-13. As such, not only is my study an unbiased sample of settlements, but the number of settlements included in my study is several times the number of settlements per year that has been identified in any other empirical study of class action settlements: over this two-year period, I found 688 settlements, including 23 from the Tenth Circuit. *See id*. at 817. I presented the findings of my study at the Conference on Empirical Legal Studies at the University of Southern California School of Law in 2009, the Meeting of the Midwestern Law and Economics Association at the University

of Notre Dame in 2009, and before the faculties of many law schools in 2009 and 2010. This study has been relied upon by a number of scholars, testifying experts, and courts, including the Seventh Circuit.[1] I will draw upon this study in this declaration.

4. In addition to my empirical works, I have also published many papers on how law-and-economics theory affects attorneys and others in class action litigation. *See, e.g.*, Brian T. Fitzpatrick, *The End of Objector Blackmail?*, 62 Vand. L. Rev. 1623 (2009); Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little*, 158 U. Pa. L. Rev. 2043 (2010) (hereinafter "Class Action Lawyers"). The culmination of these papers will be a book published next year by the University of Chicago Press entitled THE CONSERVATIVE CASE FOR CLASS ACTIONS, where I argue

[1] *See, e.g.*, *Silverman v. Motorola Solutions, Inc.*, 739 F.3d 956, 958 (7th Cir. 2013) (relying on article to assess fees); *Little v. Washington Metro. Area Transit Auth.*, 2018 WL 1997257, at *7 (D.D.C. Apr. 27, 2018) (same); *Hillson v. Kelly Servs. Inc.*, 2017 WL 3446596, at *4 (E.D. Mich. Aug. 11, 2017) (same); *Good v. W. Virginia-Am. Water Co.*, 2017 WL 2884535, at *23, *27 (S.D.W. Va. July 6, 2017) (same); *McGreevy v. Life Alert Emergency Response, Inc.*, 258 F. Supp. 3d 380, 385 (S.D.N.Y. 2017) (same); *Brown v. Rita's Water Ice Franchise Co. LLC*, 2017 WL 1021025, at *9 (E.D. Pa. Mar. 16, 2017) (same); *In re Credit Default Swaps Antitrust Litig.*, 2016 WL 1629349, at *17 (S.D.N.Y. Apr. 24, 2016) (same); *Gehrich v. Chase Bank USA, N.A.*, 316 F.R.D. 215, 236 (N.D. Ill. 2016) (same); *Ramah Navajo Chapter v. Jewell*, 167 F. Supp. 3d 1217, 1246 (D.N.M. 2016) (same); *In re: Cathode Ray Tube (Crt) Antitrust Litig.*, 2016 WL 721680, at *42 (N.D. Cal. Jan. 28, 2016) (same); *In re Pool Products Distribution Mkt. Antitrust Litig.*, 2015 WL 4528880, at *19-20 (E.D. La. July 27, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 2147679, at *2-4 (N.D. Ill. May 6, 2015) (same); *Craftwood Lumber Co. v. Interline Brands, Inc.*, 2015 WL 1399367, at *3-5 (N.D. Ill. Mar. 23, 2015) (same); *In re Capital One Tel. Consumer Prot. Act Litig.*, 2015 WL 605203, at *12 (N.D. Ill. Feb. 12, 2015) (same); *In re Neurontin Marketing and Sales Practices Litig.*, 2014 WL 5810625, at *3 (D. Mass. Nov. 10, 2014) (same); *Tennille v. W. Union Co.*, 2014 WL 5394624, at *4 (D. Colo. Oct. 15, 2014) (same); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 349-51 (S.D.N.Y. 2014) (same); *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 991 F. Supp. 2d 437, 444-46 & n.8 (E.D.N.Y. 2014) (same); *In re Federal National Mortgage Ass'n Secs., Deriv., and "ERISA" Litig.*, 4 F. Supp. 3d 94, 111-12 (D.D.C. 2013) (same); *In re Vioxx Products Liability Litig.*, 2013 WL 5295707, at *3-4 (E.D. La. Sep. 18, 2013) (same); *In re Black Farmers Discrimination Litig.*, 953 F. Supp. 2d 82, 98-99 (D.D.C. 2013) (same); *In re Southeastern Milk Antitrust Litig.*, 2013 WL 2155387, at *2 (E.D. Tenn., May 17, 2013) (same); *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1081 (S.D. Tex. 2012) (same); *Pavlik v. FDIC*, 2011 WL 5184445, at *4 (N.D. Ill. Nov. 1, 2011) (same); *In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 40 (D.D.C. 2011) (same); *In re AT & T Mobility Wireless Data Servs. Sales Tax Litig.*, 792 F. Supp. 2d 1028, 1033 (N.D. Ill. 2011) (same); *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 359 (E.D.N.Y. 2010) (same).

that the so-called "private attorney general" is superior to the public attorney general in the enforcement of the rules that free markets need in order to operate effectively.

5. I have been asked by class counsel to opine on whether the attorneys' fees they have requested are reasonable. In order to formulate my opinion, I reviewed a number of documents provided to me by class counsel; I have attached a list of these documents (and noted how I refer to these documents herein) in Exhibit 2. As I explain, based on my study of settlements across the country and in the Tenth Circuit in particular, I believe the fee requested here is reasonable.

II. Case background

6. This lawsuit is the successful culmination of over a decade of otherwise unsuccessful efforts to hold the defendants accountable for the underpayment of certain royalties in Oklahoma. Before this lawsuit was filed in 2016, several similar lawsuits had foundered at class certification and the res judicata effects thereof. *See Gillespie v. Amoco Prod. Co.*, No. CIV-96-063-M (E.D. Okla. Jan. 11, 1999) (class certification denied); *Watts v. Amoco Prod. Co.*, No. C-2001-73 (Okla. Dist. Ct. Dec. 10, 2002) (same); *Rees v. BP America Prod. Co.*, 211 P.3d 910 (Okla. Civ. App. 2008) (dismissed on res judicata in light of *Watts*), *cert denied* (April 13, 2009); *Chockley v. BP America Prod. Co.*, No. CJ-2002-84 (Okla. Dist. Ct.) (filed in 2005 but inactive after *Rees*). The turning point was the Supreme Court's decision in *Smith v. Bayer Corp.*, 54 U.S. 299 (2011), which held that denials of class certification cannot have res judicata effects on absent class members because they are not bound by rulings in class actions until the class is certified. The *Smith* opinion led class counsel to file this lawsuit, and, as I explain below, it is the first one to come to a resolution for the class.

7. But it is not the first one to produce relief for the class. After *Chockley* was filed but before *Rees* was concluded and cast doubt on any future litigation against the defendants for these royalty underpayments, the defendants decided to change their royalty calculations to avoid additional liability. Class counsel's expert estimates that class members have already avoided $38 million in royalty underpayments due to this change.

8. Nonetheless, although the defendants changed their royalty formula, they continued fighting their liability for past royalty payments in *Chockley* and this suit. But after two years of discovery fights and pretrial motions, they finally capitulated and agreed to settle this case. The settlement would also resolve the *Chockley* litigation, and, rather than compete with one another and possibly create an undesirable so-called "reverse auction" (whereby defendants could play class counsel off one another to minimize their liability), counsel in both cases decided to combine their efforts and join with one another as class counsel in this case. The court granted preliminary approval to the settlement on September 5, 2018.

9. The proposed settlement class includes, with some exceptions, "[a]ll persons or entities . . . who are or were royalty owners in wells located in Oklahoma which had production during any portion of the time period from January 1, 1985 through and including December 31, 2017" where the defendants marketed its share of gas. Settlement Agreement § 1.42. If the settlement is approved, the class will receive $147 million in cash distributed via a formula that will be separately presented to the court, with no amount reverting back to the defendants (other than for class members who choose opt out); any leftover money will go to *cy pres*. *See id*. at §§ 2.1, 6.1, 6.4, 6.18. In addition, the defendants have agreed to continue calculating royalties as they have since 2008 for at least seven more years. *See id*. at § 2.4. Class counsel's expert estimates that class members will avoid another $36 million in underpaid royalties. In exchange for these

benefits, class members will release the defendants from claims that were "asserted or that could have been asserted" in this litigation, including claims "related to or arising from the underpayment or non-payment . . . of royalties on gas and gas constituents" produced from the class's wells. *See id.* at § 1.35.

10. Class counsel are now moving for an award of fees equal to $58.8 million. If granted this fee award would represent 26.6% of the total benefits conferred on the class by the settlement. In my opinion, the fee requested here is within the range of reason.

III. Assessment of the reasonableness of the request for attorneys' fees

11. This is a so-called "common fund" settlement, where the efforts by attorneys for the plaintiffs have created a common fund for the benefit of class members, but, because this is a class action and there is no fee-shifting statute applicable, the attorneys can be compensated only from the fund they have created. At one time, courts that awarded fees in common fund class action cases did so using the familiar "lodestar" approach. *See* Brian T. Fitzpatrick, *Do Class Action Lawyers Make Too Little*, 158 U. Pa. L. Rev. 2043, 2051 (2010) (hereinafter "Class Action Lawyers"). Under this approach, courts awarded class counsel a fee equal to the number of hours they worked on the case (to the extent the hours were reasonable), multiplied by a reasonable hourly rate as well as by a discretionary multiplier that courts often based on the risk of non-recovery and other factors. *See id.* Over time, however, the lodestar approach fell out of favor in common fund class action cases because it was difficult to calculate the lodestar (courts had to review voluminous time records and the like). More importantly, it was disfavored because the method did not align the interests of class counsel with the interests of the class (because class counsel's recovery did not depend on how much the class recovered). *See id.* at 2051-52.

According to my empirical study, the lodestar method is now used to award fees in only a small percentage of class action cases. *See* Fitzpatrick, *Empirical Study*, *supra*, at 832 (finding the lodestar method used in only 12% of settlements). The other large-scale academic study of class action fees, authored over time by Geoff Miller and the late Ted Eisenberg, agrees with my findings. *See* Theodore Eisenberg & Geoffrey P. Miller, *Attorneys' Fees and Expenses in Class Action Settlements: 1993-2008*, 7 J. Empirical L. Stud. 248, 267 (2010) (finding lodestar method used only 13.6% of the time before 2002 and less than 10% of the time thereafter) (hereinafter "Eisenberg-Miller 2010"); Theodore Eisenberg et al., *Attorneys' Fees in Class Action Settlements: 2009-2013*, 92 N.Y.U. L. Rev. 937, 945 (2017) (finding lodestar method used less than 7% of the time since 2009) (hereinafter "Eisenberg-Miller 2017").

12. Reflecting this trend, the Tenth Circuit has expressed its "preference" for what is known as the percentage method. *Gottlieb v. Barry*, 43 F.3d 474, 487 (10th Cir. 1994) (holding that district court had abused its discretion by using the lodestar method). Under this approach, courts select a percentage that they believe is fair to class counsel, multiply the settlement amount by that percentage, and then award class counsel the resulting product. The percentage approach has the advantages of being efficient in its process of calculation, and, more importantly, of aligning the interests of class counsel with the interests of the class (because the more the class recovers, the more class counsel recovers). *See* Fitzpatrick, *Class Action Lawyers*, *supra*, at 2052. In light of the well-recognized disadvantages of the lodestar method and the well-recognized advantages of the percentage method, it is my opinion that courts should generally use the percentage method in common fund cases whenever the value of the settlement can be reliably calculated. It is my opinion that courts should use the lodestar method only where the value of the settlement cannot be reliably calculated (and the percentage method is therefore not feasible) or a

fee-shifting statute is applicable (and the statute requires it). This is not just my opinion. It is the consensus opinion of class action scholars. *See* American Law Institute, Principles of the Law of Aggregate Litigation § 3.13(b) (2010) ("[A] percentage-of-the-fund approach should be the method utilized in most common-fund cases."). In this case, the settlement is readily quantifiable; therefore, in my opinion, the percentage method should be used. Accordingly, I will assess the reasonableness of the fee requests here using the percentage method.

13. Under the percentage method, courts must 1) calculate the value of the settlement and then 2) select a percentage of that value to award to class counsel. When calculating the value of the settlement, courts should and usually do include any cash compensation to class members, cash the defendant must pay to third parties, non-cash relief that can be reliably valued, attorneys' fees and expenses, and administrative costs paid by the defendant. *See, e.g.*, *In re Heartland Payment*, 851 F.Supp.2d 1040, 1080 (S.D. Tex. 2012). When selecting the percentage, courts in the Tenth Circuit usually consider the twelve factors from *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974): "(1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) any prearranged fee . . .; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases." *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454-56 (10th Cir. 1988). As I explain, in my opinion, the fee request here is justified in light of these factors.

Valuation of the Settlement

14. As I noted above, the settlement includes $147 million in cash. But that is not all: it also includes a commitment by the defendant to calculate royalties in a manner favorable to the class for the next seven years. Moreover, it is undisputed that the defendants voluntarily implemented these same calculations starting in 2008 to limit their future liability in the *Chockley* lawsuit; thus, class members benefited from this litigation even before the settlement in this case was reached. In many cases, it is challenging to quantify the value to class members that will accrue from changes in the defendants' behavior. This is not one of those cases. The changes in royalty calculations inspired by this litigation and now required by the settlement are real cash benefits just as much as the settlement fund is: class members have received more cash in their pockets for several years and will continue to due to their increased royalty calculations. In my opinion, there is no reason not to fully include these benefits in the value of the common fund. As I noted above, class counsel's expert estimated that the increased cash payments over the last ten years have been $38 million and the increased cash payments over the next seven years will be $36 million. Altogether then, this settlement has already conferred or will confer some $221 million in real cash benefits on class members.

Selecting the Fee Percentage

15. The fee request in this case is $58.8 million, or 26.6% of the total benefits conferred on the class by class counsel. In my opinion, this fee percentage is justified by the Tenth Circuit's factors. *See, e.g., Uselton v. Commercial Lovelace Motor Freight, Inc.*, 9 F.3d 849 (10th Cir. 1993) (affirming fee award of 29% of common fund).

16. Consider first the factor that asks the Court to examine what the representative plaintiffs agreed to pay class counsel in their retainer agreements: "(6) any prearranged fee." According to class counsel, the representative plaintiff in this case agreed to compensate class

counsel 40% of any recovery. This is number is obviously far above the 26.6% sought by class counsel and therefore supports the fee request.

17. Consider next the factors that go to the fee awards in other class action cases: "(5) the customary fee" and "(12) awards in similar cases." According to my empirical study, there were 18 class action cases in 2006 and 2007 in which district courts in the Tenth Circuit used the percentage method to award attorneys' fees. *See* Fitzpatrick, *Empirical Study*, *supra*, at 836. The average fee awarded in these cases was 25.3% and the median fee awarded was 25.5%. *See id.* The most populous fee range was the range in which this request falls: 25% (inclusive) to 30%. Indeed, fully *half* of the percentage-method awards in the Tenth Circuit fell into that range. These findings are consistent with the other large-scale study of class action fee awards. *See Eisenberg-Miller 2010*, *supra*, at 260 (finding mean and median in Tenth Circuit of 22% and 23%, respectively); *Eisenberg-Miller 2017*, *supra*, at 951 (finding mean and median in Tenth Circuit of 27% and 25%, respectively). As such, the Tenth Circuit data supports the fee request here.

18. As does data outside the Tenth Circuit. According to my empirical study, the most common percentages awarded by federal courts nationwide using the percentage method were 25%, 30%, and 33%, with nearly a third of awards in the range sought here between 25% (inclusive) and 30%—and another third of awards at or above 30%; thus, some two-thirds of fee awards nationwide were 25% *or more*. The mean award was 25.4% and the median was 25%. *See id.* at 833-34, 838. Again, all of these numbers are consistent with other large-scale empirical study of fee awards. *See Eisenberg-Miller 2010*, *supra*, at 260 (finding mean and median nationwide of 24% and 25%, respectively); *Eisenberg-Miller 2017*, *supra*, at 951 (finding mean and median nationwide of 27% and 29%, respectively). As such, the nationwide data supports this request as well.

19. It is true the nationwide data in my empirical study (consistent, again, with the other large-scale empirical study, *see Eisenberg-Miller 2010*, *supra*, at 264; *Eisenberg-Miller 2017*, *supra*, at 947-48) showed that settlement size had a statistically significant but inverse relationship with the fee percentages awarded—*i.e.*, that federal courts awarded lower percentages in cases where settlements were larger. *See* Fitzpatrick, *Empirical Study*, *supra*, at 838, 842-44. For example, in the 14 percentage-method awards in my dataset between $100 million and $250 million, the mean and median fee percentages were 17.9% and 16.9%, respectively. *See id.* at 839. (The Eisenberg-Miller study does not report separate fee-percentage averages and medians for very large settlements.)

20. In my opinion, it undermines rather than furthers the goals of class action litigation to cut fee percentages simply because settlements are large. Indeed, doing so can incentivize class action lawyers to settle for *less* rather than more. Consider the following example: if courts award fees of 15% in $200 million settlements, but 33% in $100 million settlements, then class action lawyers are better off settling for $100 million ($33 million fee) than $200 million ($30 million fee)! Needless to say, such incentives are not good for compensation or deterrence. For this reason, many courts reject this bigger-settlement-smaller-percentage practice. *See*, *e.g.*, *In re Synthroid Marketing Litigation*, 264 F.3d 712, 718 (7th Cir. 2001) (holding that, because "[p]rivate parties would never contract for such an arrangement," courts should not force such an arrangement on absent class members); *In re Cendant Corp. Litigation*, 264 F.3d 201, 284 n. 55 (3d Cir. 2001) ("Th[e] position [that the percentage of a recovery devoted to attorneys fees should decrease as the size of the overall settlement or recovery increases] . . . has been criticized by respected courts and commentators, who contend that such a fee scale often gives counsel an incentive to settle cases too early and too cheaply." (alteration in original)); *In re Checking Account*

Overdraft Litig., 830 F. Supp. 2d 1330, 1367 (S.D. Fla. 2011) ("While some reported cases have advocated decreasing the percentage awarded as the gross class recovery increases, that approach is antithetical to the percentage of the recovery method . . ., the whole purpose of which is to align the interests of Class Counsel and the Class by rewarding counsel in proportion to the result obtained. By not rewarding Class Counsel for the additional work necessary to achieve a better outcome for the class, the sliding scale approach creates the perverse incentive for Class Counsel to settle too early for too little." (quoting *Allapattah Servs. Inc. v. Exxon Corp.*, 454 F.Supp.2d 1185, 1213 (S.D.Fla.2006))); *In re Toyota Motor Corp. Unintended Acceleration Marketing, Sales Practices, and Products Liability Litigation*, No. 8:10ML-02151-JVS, 2013 WL 12327929, at 17 n.16 (C.D. Cal., Jun. 17, 2013) ("The Court also agrees with . . . other courts, e.g., *Allapattah Servs.*, 454 F. Supp. 2d at 1213, which have found that decreasing a fee percentage based only on the size of the fund would provide a perverse disincentive to counsel to maximize recovery for the class."). Indeed, many scholars believe that, if fees are to be adjusted *at all* based on the size of the settlement, they should go *up* as the settlements go up. *See, e.g.*, John C. Coffee, Jr., *Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions*, 86 Colum. L. Rev. 669, 697 (1986) ("[T]he most logical answer to this problem of premature settlement would be to base fees on a graduated, increasing percentage of the recovery formula—one that operates, much like the Internal Revenue Code, to award the plaintiff's attorney a marginally greater percentage of each defined increment of the recovery."). The reason for this is that many scholars believe that the more difficult dollars to extract from defendants are the *later* dollars in a case; the earliest dollars are the easiest to get. If this is true, then the bigger-settlement-smaller-percentage practice will

blunt class counsel's incentives to fight for the class precisely when their incentives need to be bolstered rather than blunted.

21. Nonetheless, as I noted, courts sometimes do not follow this advice and slash fee percentages in bigger cases despite the negative incentives it may cause. It is important to realize however, that, although the fee request here would be higher than the mean and median in my study for larger cases, the standard deviation around the mean was quite large in my study: *i.e.*, 5.2% in the $100-$250 million range. *See id.* This means that the fee range for large settlements in my study was very broad. As such, there are many examples of courts awarding class action lawyers even higher fee percentages than requested here in cases of this size (or even bigger) when the facts and circumstances justify it. *See, e.g.*, *Allapattah Servs. Inc. v. Exxon Corp*., 454 F. Supp. 2d 1185, 1213 (S.D. Fla. 2006) (31.33% of $1.075 billion); *In re Urethane Antitrust Litig*., No. 04 Civ. 1616, 2016 WL 4060156, at *6 (D. Kan. July 29, 2016) (33.33% of $835 million); *Dahl v. Bain Capital Partners, LLC*, No. 07-cv-12388, Dkt. 1095 (D. Mass. Feb. 2, 2015) ("*Dahl*") (33% of $590.5 million); *In re Initial Pub. Offering Sec. Litig*., 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (33% of $510 million); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330 (S.D. Fla. 2011) (30% of $410 million); *In re Vitamins Antitrust Litig.*, No. Misc. 99-197(TFH), 2001 WL 34312839, *10, 14 (D.D.C. July 16, 2001) (34% of $359 million); *In re Tricor Direct Purchaser Antitrust Litig.*, No. 05-340-SLR, ECF No. 543 (D. Del. 2009) (33% of $250 million); *In re Linerboard Antitrust Litig*., 2004 WL 1221350, at *1 (E.D.Pa., June 2, 2004) (30% of $202 million); *In re Apollo Group Inc. Securities Litigation*, 2012 WL 1378677, at *9 (D.Ariz., April 20, 2012) (33% of $145 million); *In re Combustion Inc*., 968 F.Supp. 1116, 1142 (W.D.La. 1997) (36% of $127 million); *Kurzwell v. Philip Morris Companies*, 1999 WL 1076105, at *1 (S.D.N.Y., Nov. 30, 1999) (30% of $123 million); *In re Ikon Office Solutions, Inc. Securities Litig.*, 194 F.R.D.

166, 197 (E.D.Pa. 2000) (30% of $111 million). As I explain further below, it is my opinion that the facts and circumstances of this case justify an above-average fee percentage.

22. Consider next the *Johnson* factors that go to the results obtained by class counsel in light of the risks the class faced: "(2) the novelty and difficulty of the questions"; "(4) the preclusion of other employment by the attorney due to acceptance of the case"; "(8) the amount involved and the results obtained"; and "(10) the undesirability of the case." Consider first the risks the class faced. They were considerable. With respect to the class's state law claims, it is unclear where along the production chain the defendants can legally deduct expenses from the class's royalties. With respect to the class's RICO claims, it is notoriously difficult to prove the conspiracy elements of these claims. With respect to both sets of claims, much of the class's case depended on very old documents that may or may not have been admitted into evidence as well as expert testimony that may or may not have been excluded. Finally, even if all the class's evidence and expert testimony would have been admitted, it is always uncertain which evidence and which experts a jury will believe and what number they will award in damages. It is also uncertain what an appellate court would have done with any of these questions. When measured against these risks, the class's recovery here is outstanding: the class is receiving *over 100% of its damages*. In particular, the cash portion of the settlement is *more* than 100% of the class's past damages (which class counsel's expert has estimated at around $145 million); moreover, the defendants' agreement to change the royalty formula in the manner demanded by the class means that class members have avoided and will continue to avoid for many more years *100% of these losses* in the first place. Although the settlement does not recover much in the way of prejudgment interest or trebling under RICO, it is rare for a class action to recover 100% of even ordinary damages. *See, e.g.*, John M. Connor & Robert H. Lande, *Not Treble Damages: Cartel Recoveries are Mostly Less Than*

Single Damages, 100 Iowa L. Rev. 1997, 2010 (2015) (finding the weighted average of recoveries—the authors' preferred measure—to be 19% of single damages for antitrust cases between 1990 to 2014 despite the fact that the Sherman Act allows treble damages). As such, all of these factors, too, support the fee requested here.

23. Consider next the factor that goes to the time it took to litigate and settle this case: "(1) the time and labor required." This lawsuit was filed in 2016, but *Chockley* began *thirteen years* ago. Indeed, altogether, class counsel have put in more than 10,000 hours in this litigation. In my empirical study, the average and median times class action cases litigated before settling were around three years (1196 days and 1068 days, respectively). *See* Fitzpatrick, *Empirical Study*, *supra*, at 820. Class counsel have been waiting to be paid for many of their hours far longer than the average class action lawyer. Thus, this factor also supports the fee request here.

24. Consider finally the remaining *Johnson* factors. These factors go to the skills of class counsel and their relationship with the plaintiffs: "(3) the skill requisite to perform the legal service properly," "(7) time limitations imposed by the client or the circumstances," "(9) the experience, reputation, and ability of the attorneys," and "(11) the nature and length of the professional relationship with the client." Although I was not privy to the attorney-client relationships here, I can say that class counsel count among their number some of the most experienced oil and gas attorneys in the United States. Moreover, I think the results in this case speak for themselves with regard to class counsel's skills. As such, all of these factors also support the fee award requested here.

25. For all these reasons, I believe the fee award requested here is reasonable.

26. My compensation in this matter has been $895 per hour.

Cambridge, MA

October 16, 2018

Brian T. Fitzpatrick

EXHIBIT 1

BRIAN T. FITZPATRICK

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ACADEMIC APPOINTMENTS

HARVARD LAW SCHOOL, *Visiting Professor*, Fall 2018
- Classes: Civil Procedure, Litigation Finance

VANDERBILT UNIVERSITY LAW SCHOOL, *Professor*, 2012 to present
- *FedEx Research Professor*, 2014-2015; *Associate Professor*, 2010-2012; *Assistant Professor*, 2007-2010
- Classes: Civil Procedure, Complex Litigation, Federal Courts, Comparative Class Actions
- Hall-Hartman Outstanding Professor Award, 2008-2009
- Vanderbilt's Association of American Law Schools Teacher of the Year, 2009

FORDHAM LAW SCHOOL, *Visiting Professor*, Fall 2010
- Classes: Civil Procedure

EDUCATION

HARVARD LAW SCHOOL, J.D., *magna cum laude*, 2000
- Fay Diploma (for graduating first in the class)
- Sears Prize, 1999 (for highest grades in the second year)
- *Harvard Law Review*, Articles Committee, 1999-2000; Editor, 1998-1999
- *Harvard Journal of Law & Public Policy*, Senior Editor, 1999-2000; Editor, 1998-1999
- Research Assistant, David Shapiro, 1999; Steven Shavell, 1999

UNIVERSITY OF NOTRE DAME, B.S., Chemical Engineering, *summa cum laude*, 1997
- First runner-up to Valedictorian (GPA: 3.97/4.0)
- Steiner Prize, 1997 (for overall achievement in the College of Engineering)

CLERKSHIPS

HON. ANTONIN SCALIA, Supreme Court of the United States, 2001-2002

HON. DIARMUID O'SCANNLAIN, U.S. Court of Appeals for the Ninth Circuit, 2000-2001

EXPERIENCE

NEW YORK UNIVERSITY SCHOOL OF LAW, Feb. 2006 to June 2007
John M. Olin Fellow

HON. JOHN CORNYN, United States Senate, July 2005 to Jan. 2006
Special Counsel for Supreme Court Nominations

SIDLEY AUSTIN LLP, Washington, DC, 2002 to 2005
Litigation Associate

BOOKS

THE CONSERVATIVE CASE FOR CLASS ACTIONS (University of Chicago Press, forthcoming 2019)

ACADEMIC ARTICLES

Can and Should the New Third-Party Litigation Financing Come to Class Actions?, 19 THEORETICAL INQUIRIES IN LAW 109 (2018)

Scalia in the Casebooks, 84 U. CHI. L. REV. 2231 (2017)

The Ideological Consequences of Judicial Selection, 70 VAND. L. REV. 1729 (2017)

Judicial Selection and Ideology, 42 OKLAHOMA CITY UNIV. L. REV. 53 (2017)

Justice Scalia and Class Actions: A Loving Critique, 92 NOTRE DAME L. REV. 1977 (2017)

A Tribute to Justice Scalia: Why Bad Cases Make Bad Methodology, 69 VAND. L. REV. 991 (2016)

The Hidden Question in Fisher, 10 NYU J. L. & LIBERTY 168 (2016)

An Empirical Look at Compensation in Consumer Class Actions, 11 NYU J. L. & BUS. 767 (2015) (with Robert Gilbert)

The End of Class Actions?, 57 ARIZ. L. REV. 161 (2015)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, 98 VA. L. REV. 839 (2012)

Twombly *and* Iqbal *Reconsidered*, 87 NOTRE DAME L. REV. 1621 (2012)

An Empirical Study of Class Action Settlements and their Fee Awards, 7 J. EMPIRICAL L. STUD. 811 (2010) (selected for the 2009 Conference on Empirical Legal Studies)

Do Class Action Lawyers Make Too Little?, 158 U. PA. L. REV. 2043 (2010)

Originalism and Summary Judgment, 71 OHIO ST. L.J. 919 (2010)

The End of Objector Blackmail?, 62 VAND. L. REV. 1623 (2009) (selected for the 2009 Stanford-Yale Junior Faculty Forum)

The Politics of Merit Selection, 74 MISSOURI L. REV. 675 (2009)

Errors, Omissions, and the Tennessee Plan, 39 U. MEMPHIS L. REV. 85 (2008)

Election by Appointment: The Tennessee Plan Reconsidered, 75 TENN. L. REV. 473 (2008)

Can Michigan Universities Use Proxies for Race After the Ban on Racial Preferences?, 13 MICH. J. RACE & LAW 277 (2007)

BOOK CHAPTERS

Do Class Actions Deter Wrongdoing? in THE CLASS ACTION EFFECT (Catherine Piché, ed., Éditions Yvon Blais, Montreal, 2018)

Judicial Selection in Illinois in AN ILLINOIS CONSTITUTION FOR THE TWENTY-FIRST CENTURY (Joseph E. Tabor, ed., Illinois Policy Institute, 2017)

Civil Procedure in the Roberts Court in BUSINESS AND THE ROBERTS COURT (Jonathan Adler, ed., Oxford University Press, 2016)

Is the Future of Affirmative Action Race Neutral? in A NATION OF WIDENING OPPORTUNITIES: THE CIVIL RIGHTS ACT AT 50 (Ellen Katz & Samuel Bagenstos, eds., Michigan University Press, 2016)

ACADEMIC PRESENTATIONS

Empirical Research on Class Actions, Civil Justice Research Initiative, University of California at Berkeley, Berkeley, California (Apr. 9, 2018)

A Political Future for Class Actions in the United States?, The Future of Class Actions Symposium, University of Auckland Law School, Auckland, New Zealand (Mar. 15, 2018)

The Indian Class Actions: How Effective Will They Be?, Eighth Annual Emerging Markets Finance Conference, Mumbai, India (Dec. 19, 2017)

Hot Topics in Class Action and MDL Litigation, University of Miami School of Law, Miami, Florida (Dec. 8, 2017) (panelist)

Critical Issues in Complex Litigation, Contemporary Issues in Complex Litigation, Northwestern Law School (Nov. 29, 2017) (panelist)

The Conservative Case for Class Actions, Consumer Class Action Symposium, National Consumer Law Center, Washington, DC (Nov. 19, 2017)

The Conservative Case for Class Actions—A Monumental Debate, ABA National Institute on Class Actions, Washington, DC (Oct. 26, 2017) (panelist)

One-Way Fee Shifting after Summary Judgment, 2017 Meeting of the Midwestern Law and Economics Association, Marquette Law School, Milwaukee, WI (Oct. 20, 2017)

The Conservative Case for Class Actions, Pepperdine Law School Malibu, CA (Oct. 17, 2017)

One-Way Fee Shifting after Summary Judgment, Vanderbilt Law Review Symposium on The Future of Discovery, Vanderbilt Law School, Nashville, TN (Oct. 13, 2017)

The Constitution Revision Commission and Florida's Judiciary, 2017 Annual Florida Bar Convention, Boca Raton, FL (June 22, 2017)

Class Actions After Spokeo v. Robins*: Supreme Court Jurisprudence, Article III Standing, and Practical Implications for the Bench and Practitioners*, Northern District of California Judicial Conference, Napa, CA (Apr. 29, 2017) (panelist)

The Ironic History of Rule 23, Conference on Secrecy, Institute for Law & Economic Policy, Naples, FL (Apr. 21, 2017)

Justice Scalia and Class Actions: A Loving Critique, University of Notre Dame Law School, South Bend, Indiana (Feb. 3, 2017)

Should Third-Party Litigation Financing Be Permitted in Class Actions?, Fifty Years of Class Actions—A Global Perspective, Tel Aviv University, Tel Aviv, Israel (Jan. 4, 2017)

Hot Topics in Class Action and MDL Litigation, University of Miami School of Law, Miami, Florida (Dec. 2, 2016) (panelist)

The Ideological Consequences of Judicial Selection, William J. Brennan Lecture, Oklahoma City University School of Law, Oklahoma, City, Oklahoma (Nov. 10, 2016)

After Fifty Years, What's Class Action's Future, ABA National Institute on Class Actions, Las Vegas, Nevada (Oct. 20, 2016) (panelist)

Where Will Justice Scalia Rank Among the Most Influential Justices, State University of New York at Stony Brook, Long Island, New York (Sep. 17, 2016)

The Ironic History of Rule 23, University of Washington Law School, Seattle, WA (July 14, 2016)

A Respected Judiciary—Balancing Independence and Accountability, 2016 Annual Florida Bar Convention, Orlando, FL (June 16, 2016) (panelist)

What Will and Should Happen to Affirmative Action After Fisher v. Texas, American Association of Law Schools Annual Meeting, New York, NY (January 7, 2016) (panelist)

Litigation Funding: The Basics and Beyond, NYU Center on Civil Justice, NYU Law School, New York, NY (Nov. 20, 2015) (panelist)

Do Class Actions Offer Meaningful Compensation to Class Members, or Do They Simply Rip Off Consumers Twice?, ABA National Institute on Class Actions, New Orleans, LA (Oct. 22, 2015) (panelist)

Arbitration and the End of Class Actions?, Quinnipiac-Yale Dispute Resolution Workshop, Yale Law School, New Haven, CT (Sep. 8, 2015) (panelist)

The Next Steps for Discovery Reform: Requester Pays, Lawyers for Civil Justice Membership Meeting, Washington, DC (May 5, 2015)

Private Attorney General: Good or Bad?, 17th Annual Federalist Society Faculty Conference, Washington, DC (Jan. 3, 2015)

Liberty, Judicial Independence, and Judicial Power, Liberty Fund Conference, Santa Fe, NM (Nov. 13-16, 2014) (participant)

The Economics of Objecting for All the Right Reasons, 14th Annual Consumer Class Action Symposium, Tampa, FL (Nov. 9, 2014)

Compensation in Consumer Class Actions: Data and Reform, Conference on The Future of Class Action Litigation: A View from the Consumer Class, NYU Law School, New York, NY (Nov. 7, 2014)

The Future of Federal Class Actions: Can the Promise of Rule 23 Still Be Achieved?, Northern District of California Judicial Conference, Napa, CA (Apr. 13, 2014) (panelist)

The End of Class Actions?, Conference on Business Litigation and Regulatory Agency Review in the Era of Roberts Court, Institute for Law & Economic Policy, Boca Raton, FL (Apr. 4, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, University of Missouri School of Law, Columbia, MO (Mar. 7, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, George Mason Law School, Arlington, VA (Mar. 6, 2014)

Should Third-Party Litigation Financing Come to Class Actions?, Roundtable for Third-Party Funding Scholars, Washington & Lee University School of Law, Lexington, VA (Nov. 7-8, 2013)

Is the Future of Affirmative Action Race Neutral?, Conference on A Nation of Widening Opportunities: The Civil Rights Act at 50, University of Michigan Law School, Ann Arbor, MI (Oct. 11, 2013)

The Mass Tort Bankruptcy: A Pre-History, The Public Life of the Private Law: A Conference in Honor of Richard A. Nagareda, Vanderbilt Law School, Nashville, TN (Sep. 28, 2013) (panelist)

Rights & Obligations in Alternative Litigation Financing and Fee Awards in Securities Class Actions, Conference on the Economics of Aggregate Litigation, Institute for Law & Economic Policy, Naples, FL (Apr. 12, 2013) (panelist)

The End of Class Actions?, Symposium on Class Action Reform, University of Michigan Law School, Ann Arbor, MI (Mar. 16, 2013)

Toward a More Lawyer-Centric Class Action?, Symposium on Lawyering for Groups, Stein Center for Law & Ethics, Fordham Law School, New York, NY (Nov. 30, 2012)

The Problem: AT & T as It Is Unfolding, Conference on *AT & T Mobility v. Concepcion*, Cardozo Law School, New York, NY (Apr. 26, 2012) (panelist)

Standing under the Statements and Accounts Clause, Conference on Representation without Accountability, Fordham Law School Corporate Law Center, New York, NY (Jan. 23, 2012)

The End of Class Actions?, Washington University Law School, St. Louis, MO (Dec. 9, 2011)

Book Preview Roundtable: Accelerating Democracy: Matching Social Governance to Technological Change, Searle Center on Law, Regulation, and Economic Growth, Northwestern University School of Law, Chicago, IL (Sep. 15-16, 2011) (participant)

Is Summary Judgment Unconstitutional? Some Thoughts About Originalism, Stanford Law School, Palo Alto, CA (Mar. 3, 2011)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, Northwestern Law School, Chicago, IL (Feb. 25, 2011)

The New Politics of Iowa Judicial Retention Elections: Examining the 2010 Campaign and Vote, University of Iowa Law School, Iowa City, IA (Feb. 3, 2011) (panelist)

The Constitutionality of Federal Jurisdiction-Stripping Legislation and the History of State Judicial Selection and Tenure, Washington University Law School, St. Louis, MO (Oct. 1, 2010)

Twombly *and* Iqbal *Reconsidered*, Symposium on Business Law and Regulation in the Roberts Court, Case Western Reserve Law School, Cleveland, OH (Sep. 17, 2010)

Do Class Action Lawyers Make Too Little?, Institute for Law & Economic Policy, Providenciales, Turks & Caicos (Apr. 23, 2010)

Originalism and Summary Judgment, Georgetown Law School, Washington, DC (Apr. 5, 2010)

Theorizing Fee Awards in Class Action Litigation, Washington University Law School, St. Louis, MO (Dec. 11, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, 2009 Conference on Empirical Legal Studies, University of Southern California Law School, Los Angeles, CA (Nov. 20, 2009)

Originalism and Summary Judgment, Symposium on Originalism and the Jury, Ohio State Law School, Columbus, OH (Nov. 17, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, 2009 Meeting of the Midwestern Law and Economics Association, University of Notre Dame Law School, South Bend, IN (Oct. 10, 2009)

The End of Objector Blackmail?, Stanford-Yale Junior Faculty Forum, Stanford Law School, Palo Alto, CA (May 29, 2009)

An Empirical Study of Class Action Settlements and their Fee Awards, University of Minnesota School of Law, Minneapolis, MN (Mar. 12, 2009)

The Politics of Merit Selection, Symposium on State Judicial Selection and Retention Systems, University of Missouri Law School, Columbia, MO (Feb. 27, 2009)

The End of Objector Blackmail?, Searle Center Research Symposium on the Empirical Studies of Civil Liability, Northwestern University School of Law, Chicago, IL (Oct. 9, 2008)

Alternatives To Affirmative Action After The Michigan Civil Rights Initiative, University of Michigan School of Law, Ann Arbor, MI (Apr. 3, 2007) (panelist)

OTHER PUBLICATIONS

9th Circuit Split: What's the math say?, DAILY JOURNAL (Mar. 21, 2017)

Former clerk on Justice Antonin Scalia and his impact on the Supreme Court, THE CONVERSATION (Feb. 24, 2016)

Lessons from Tennessee Supreme Court Retention Election, THE TENNESSEAN (Aug. 20, 2014)

Public Needs Voice in Judicial Process, THE TENNESSEAN (June 28, 2013)

Did the Supreme Court Just Kill the Class Action?, THE QUARTERLY JOURNAL (April 2012)

Let General Assembly Confirm Judicial Selections, CHATTANOOGA TIMES FREE PRESS (Feb. 19, 2012)

"Tennessee Plan" Needs Revisions, THE TENNESSEAN (Feb. 3, 2012)

How Does Your State Select Its Judges?, INSIDE ALEC 9 (March 2011) (with Stephen Ware)

On the Merits of Merit Selection, THE ADVOCATE 67 (Winter 2010)

Supreme Court Case Could End Class Action Suits, SAN FRANCISCO CHRONICLE (Nov. 7, 2010)

Kagan is an Intellect Capable of Serving Court, THE TENNESSEAN (Jun. 13, 2010)

Confirmation "Kabuki" Does No Justice, POLITICO (July 20, 2009)

Selection by Governor may be Best Judicial Option, THE TENNESSEAN (Apr. 27, 2009)

Verdict on Tennessee Plan May Require a Jury, THE MEMPHIS COMMERCIAL APPEAL (Apr. 16, 2008)

Tennessee's Plan to Appoint Judges Takes Power Away from the Public, THE TENNESSEAN (Mar. 14, 2008)

Process of Picking Judges Broken, CHATTANOOGA TIMES FREE PRESS (Feb. 27, 2008)

Disorder in the Court, LOS ANGELES TIMES (Jul. 11, 2007)

Scalia's Mistake, NATIONAL LAW JOURNAL (Apr. 24, 2006)

GM Backs Its Bottom Line, DETROIT FREE PRESS (Mar. 19, 2003)

Good for GM, Bad for Racial Fairness, LOS ANGELES TIMES (Mar. 18, 2003)

10 Percent Fraud, WASHINGTON TIMES (Nov. 15, 2002)

OTHER PRESENTATIONS

Where Will Justice Scalia Rank Among the Most Influential Justices, The Leo Bearman, Sr. American Inn of Court, Memphis, TN (Mar. 21, 2017)

Bringing Justice Closer to the People: Examining Ideas for Restructuring the 9th Circuit, Subcommittee on Courts, Intellectual Property, and the Internet, United States House of Representatives, Washington, D.C. (Mar. 16, 2017)

Supreme Court Review 2016: Current Issues and Cases Update, Nashville Bar Association, Nashville, TN (Sep. 15, 2016) (panelist)

A Respected Judiciary—Balancing Independence and Accountability, Florida Bar Annual Convention, Orlando, FL (June 16, 2016) (panelist)

Future Amendments in the Pipeline: Rule 23, Tennessee Bar Association, Nashville, TN (Dec. 2, 2015)

The New Business of Law: Attorney Outsourcing, Legal Service Companies, and Commercial Litigation Funding, Tennessee Bar Association, Nashville, TN (Nov. 12, 2014)

Hedge Funds + Lawsuits = A Good Idea?, Vanderbilt University Alumni Association, Washington, DC (Sep. 3, 2014)

Judicial Selection in Historical and National Perspective, Committee on the Judiciary, Kansas Senate (Jan. 16, 2013)

The Practice that Never Sleeps: What's Happened to, and What's Next for, Class Actions, ABA Annual Meeting, Chicago, IL (Aug. 3, 2012) (panelist)

Life as a Supreme Court Law Clerk and Views on the Health Care Debate, Exchange Club, Nashville, TN (Apr. 3, 2012)

The Tennessee Judicial Selection Process—Shaping Our Future, Tennessee Bar Association Leadership Law Retreat, Dickson, TN (Feb. 3, 2012) (panelist)

Reexamining the Class Action Practice, ABA National Institute on Class Actions, New York, NY (Oct. 14, 2011) (panelist)

Judicial Selection in Kansas, Committee on the Judiciary, Kansas House of Representatives (Feb. 16, 2011)

Judicial Selection and the Tennessee Constitution, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Mar. 24, 2009)

What Would Happen if the Judicial Selection and Evaluation Commissions Sunset?, Civil Practice and Procedure Subcommittee, Tennessee House of Representatives (Feb. 24, 2009)

Judicial Selection in Tennessee, Chattanooga Bar Association, Chattanooga, TN (Feb. 27, 2008) (panelist)

Ethical Implications of Tennessee's Judicial Selection Process, Tennessee Bar Association, Nashville, TN (Dec. 12, 2007)

PROFESSIONAL ASSOCIATIONS

Member, American Law Institute
Referee, Journal of Law, Economics and Organization
Referee, Journal of Empirical Legal Studies
Reviewer, Oxford University Press
Reviewer, Supreme Court Economic Review
Member, American Bar Association
Member, Tennessee Advisory Committee to the U.S. Commission on Civil Rights
Board of Directors, Tennessee Stonewall Bar Association
American Swiss Foundation Young Leaders' Conference, 2012
Bar Admission, District of Columbia

COMMUNITY ACTIVITIES

Board of Directors, Nashville Ballet, 2011-2017; Nashville Talking Library for the Blind, 2008-2009

EXHIBIT 2

Documents Reviewed:

- Defendant's Motion to Dismiss and Brief in Support (and exhibits thereto) (document 21)
- Plaintiff's Response to Defendant's Motion to Dismiss and Brief in Support (and exhibits thereto) (document 26)
- Defendant's Reply to Plaintiff's Brief Opposing Defendant's Motion to Dismiss and Brief in Support (document 30)
- Plaintiff's Sur-Reply in Opposition to Motion to Dismiss (document 33)
- Defendant's Sur-Reply in Support of Motion to Dismiss (document 36)
- Order (document 48)
- Plaintiff's Motion to (1) Certify the Settlement Class, (2) Preliminarily Approve Class Action Settlement, (3) Approve Form and Manner of Notice; and (4) Set Date for Final Fairness Hearing, and Opening Brief in Support (as well as exhibits thereto, including the Settlement Agreement) (document 171)
- Declaration of Steven S. Gensler in Support of the Settlement Agreement, Notice of the Proposed Settlement, and Award of Attorney's Fees (filed herewith)
- Declaration of Daniel T. Reineke Valuation of Past and Future Settlement Benefits (filed herewith)
- Declaration of Terry L. Stowers in Support of Plaintiff's Attorneys' Fees and Litigation Expenses (filed herewith)
- Declaration of Robert N. Barnes, Patranell Britten Lewis and Emily Nash Kitch (filed herewith)
- Declaration of Jeffrey J. Angelovich (filed herewith)

- Declaration of Daniel E. Smolen in Support of Plaintiff's Attorneys' Fees (filed herewith).
- Declaration of Michael Burrage in Support of Plaintiff's Attorneys' Fees and Litigation Expenses (filed herewith).
- Declaration of Terry J. Barker in Support of Plaintiff's Attorneys' Fees and Litigation Expenses (filed herewith).
- Declaration of Steven W. Taylor in Support of the Settlement Agreement and Award of Attorney Fees (filed herewith).
- Declaration of John Cecil in Support of Plaintiff's Motions for Final Approval of the Class Action Settlement and for Plaintiff's Attorney's Fees, Litigation Expenses, Case Contribution Award, and Administration, Notice and Distribution Costs (filed herewith).
- Joint Declaration of Plaintiffs in *Chockley v. BP* (filed herewith).
- Declaration on behalf of Chieftain Royalty Company (filed herewith).
- Declaration on behalf of the Baptist Foundation of Oklahoma (filed herewith).
- Declaration on behalf of Sagacity, Inc. (filed herewith).
- Declaration of Robert J. Kee in Support of Plaintiff's Attorneys' Fees and Litigation Expenses (filed herewith).
- Declaration of Robert G. Gum (filed herewith).
- Joint Declaration of Class Counsel in Support of Class Representative's Motion for Approval of Attorneys' Fees, Expenses, Class Representative Award, and Settlement Administration Expenses (filed herewith).
- Declaration of Geoffrey P. Miller in Support of the Stipulation and Agreement of Settlement, Class Counsel's Application for Attorneys' Fees, Reimbursement of Litigation Expenses,

Class Representative's Request for Case Contribution Award, and Notice of Proposed Settlement in *Reirdon v. XTO Energy, Inc.*, No. 16-cv-00087 (E.D. Okla. Dec. 12, 2017).

- Declaration of Steven S. Gensler in Support of the Stipulation and Agreement of Settlement, Notice of the Proposed Settlement, and Award of Attorneys' Fees in *Reirdon v. XTO Energy, Inc.*, No. 16-cv-00087 (E.D. Okla. Dec. 12, 2017).
- Declaration of Geoffrey P. Miller in Support of the Settlement Agreement, Certification of the Settlement Class for Settlement Purposes, Class Counsel's Application for Attorneys' Fees, Reimbursement of Litigation Expenses, Class Representative's Request for Case Contribution Award, and Notice of Proposed Settlement, in *Chieftain Royalty Co. v. XTO Energy, Inc*., No. 11-cv-00029 (E.D. Okla., Feb. 23, 2018).
- Declaration of Steven S. Gensler in Support of the Settlement Agreement, Notice of the Proposed Settlement, and Award of Attorney's Fees in *Chieftain Royalty Co. v. XTO Energy, Inc*., No. 11-cv-00029 (E.D. Okla,. Feb. 26, 2018).
- Declaration of Stephen R. McNamara in Support of Incentive Award and Attorneys' Fees in *Fitzgerald Farms, LLC, v. Chesapeake Operating, LLC*, No. CJ-2010-23 (Okla. Dist. Ct., June 16, 2015).
- Final Order granting Class Counsel Fees, Litigation Costs, and Incentive Awards in *Fitzgerald Farms, LLC, v. Chesapeake Operating, LLC*, No. CJ-2010-23 (Okla. Dist. Ct., June 16, 2015).